

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 30, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL SCOTT BRUMBACK, an
individual; and GIMME GUNE, a sole
proprietorship,

Plaintiffs,

v.

ROBERT W. FERGUSON, in his official
capacity as Washington State Attorney General;
JOHN R. BATISTE, in his official capacity as
Chief of the Washington State Patrol; ROBERT
UDELL, in his official capacity as the Sheriff
for Yakima County, Washington; and JOSEPH
A. BRUSIC, in his official capacity as County
Prosecutor for Yakima County,

Defendants,

ALLIANCE FOR GUN RESPONSIBILITY,

Defendant-Intervenor.

No. 1:22-cv-03093-MKD

BENCH TRIAL
SCHEDULING ORDER

On October 30, 2023, the Court held a scheduling conference in this matter.

Simon Peter Serrano and Austin Hatcher appeared on behalf of Plaintiffs Michael

1 Brumback and Gimme Guns. Andrew W. Hughes and William McGinty appeared
2 on behalf of Defendants Robert W. Ferguson and John R. Batiste. Callie A.
3 Castillo appeared on behalf of Defendants Robert Udell and Joseph A. Brusic.
4 Zachary Pekelis appeared on behalf of Defendant-Intervenor Alliance for Gun
5 Responsibility. The Court has reviewed the Joint Status Report, ECF No. 60, has
6 heard from counsel, and is fully informed.

7 **IT IS ORDERED:**

8 **1. General Court Procedures**

9 Pursuant to Fed. R. Civ. P. 16(b)(4), the dates set forth in this Order may be
10 amended **only** by Order of the Court and upon a showing of good cause. Pursuant
11 to Fed. R. Civ. P. 29, the parties may stipulate to other procedures governing or
12 limiting discovery, except the dates set forth in this Order.

13 Counsel shall review and employ Local Civil Rule (LCivR) 83.1 (Civility)
14 and Washington Rule of Professional Conduct 3.4 (Fairness To Opposing Party
15 And Counsel).

16 **2. Rule 26(a)(1) Exchange**

17 If not already accomplished, the parties shall disclose their Fed. R. Civ. P.
18 26(a)(1) material no later than the date indicated in the Summary of Deadlines
19 below.
20

1 **3. Amend Pleadings, Add Parties, and Class Certification**

2 Any motion to amend the pleadings, add parties, or for class certification
3 shall be filed no later than the date indicated in the Summary of Deadlines below.

4 **4. Sealed Documents**

5 Any and all sealed documents shall be filed by the parties under the sealed
6 event as a sealed document. The parties are not required to file a separate motion
7 to seal a document. The parties shall file any objections to a sealed document by
8 **no later than five days** after the filing of the sealed document. The Court will
9 thereafter review the sealed document and any objections filed to determine
10 whether the document should be unsealed.

11 Any party filing a sealed document shall email
12 dimkeorders@waed.uscourts.gov to inform the Court of the filing. The email shall
13 note the ECF number of the sealed document and the general nature of the
14 document.

15 **5. Rule 26(a)(2) Expert Identification and Reports**

16 The parties are cautioned that failure to timely identify experts or provide
17 reports in accordance with Rule 26 and this scheduling order may result in
18 exclusion of such testimony absent good reason. *See Wong v. Regents of the Univ.*
19 *of Cal.*, 410 F.3d 1052 (9th Cir. 2005). Additionally, Rule 26(a)(2) reports shall be
20 emailed to the court at dimkeorders@waed.uscourts.gov.

A. Plaintiff - Initial Expert Disclosures

Each Plaintiff shall identify its experts and serve those experts' Rule 26(a)(2) reports on all other parties no later than the date indicated in the Summary of Deadlines below. Each Plaintiff shall also provide dates for which those experts can be available for deposition. Counsel is required to file a notice with the Court indicating their compliance with this Order's Rule 26(a)(2) requirements.

B. Defendant - Initial Expert Disclosure

Each Defendant and Intervenor shall identify its experts and serve those experts' Rule 26(a)(2) reports on all other parties no later than the date indicated in the Summary of Deadlines below. Each Defendant and Intervenor shall also provide dates for which those experts can be available for deposition. Counsel is required to file a notice with the Court indicating their compliance with this Order's Rule 26(a)(2) requirements.

C. Plaintiff - Rebuttal Expert Disclosure

Each Plaintiff shall identify its rebuttal experts and serve those experts' Rule 26(a)(2) reports on all other parties no later than the date indicated in the Summary of Deadlines below. Each Plaintiff shall also provide dates for which those experts can be available for deposition. Counsel is required to file a notice with the Court indicating their compliance with this Order's Rule 26(a)(2) requirements.

6. Discovery Cutoff

A. Generally

All discovery, including depositions and perpetuation depositions, shall be completed by the date indicated in the Summary of Deadlines below (“Discovery Cutoff”). To be timely, discovery requests must be served sufficiently in advance of the deadline to allow for timely response by the cutoff date. All interrogatories, requests for production, and requests for admission shall be served on the opposing party by the date indicated in the Summary of Deadlines below. The parties shall not file discovery, except those portions necessary to support motions or objections.

B. Depositions, Interrogatories, Requests for Production and/or Admission

Unless otherwise stipulated, no more than 10 depositions up to seven hours long, may be taken by the plaintiffs, or by the defendants and intervenor, or by third-party defendants. Fed. R. Civ. P. 30(a)(2)(A), (d)(1).

Unless otherwise stipulated, any one party may serve no more than 25 written interrogatories, including discrete subparts, on any other party. Fed. R. Civ. P. 33(a)(1) advisory committee’s note to 1993 amendment (explaining “discrete subparts”).

1 Unless otherwise stipulated, any one party may serve no more than 30
2 requests for production, including discrete subparts, on any other party. LCivR
3 34(d).

4 Unless otherwise stipulated, any one party may serve no more than 15
5 requests for admission, including discrete subparts, on any other party. LCivR
6 36(c).

7 A party needing relief from these limitations should timely seek relief from
8 the Court by motion.

9 **C. Protective Orders**

10 Any stipulation or motion for a confidentiality agreement or protective order
11 must be timely filed so as not to delay the discovery process or the Court's
12 deadlines. If confidential records are attached to court filings, "compelling
13 reasons" must be shown to seal records attached to a dispositive motion and "good
14 cause" must be shown to seal records attached to a non-dispositive motion.
15 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir.
16 2006).

17 **D. Motions to Compel**

18 To avoid wasted time and expense, the parties may contact chambers to
19 schedule a telephonic conference to obtain an expedited ruling on discovery
20 disputes. Motions to compel seeking sanctions shall be filed in writing.

1 All motions to compel discovery must be filed and served no later than **30**
2 **days** prior to the Discovery Cutoff.

3 **7. Notice of To-Be-Adjudicated Claims and Affirmative Defenses**

4 Each party shall file and serve a notice no later than **seven days** after the
5 Discovery Cutoff indicating which previously-pleaded claims and/or affirmative
6 defenses will be adjudicated at trial.

7 **8. *Daubert* and Dispositive Motions**

8 **A. Generally**

9 All *Daubert* motions and dispositive motions shall be filed on or before the
10 date indicated in the Summary of Deadlines below. Responses and replies to
11 *Daubert* and dispositive motions shall comply with LCivR 7. No supplemental
12 responses or supplemental replies to any *Daubert* or dispositive motion may be
13 filed without Court permission.

14 **B. Summary Judgment Motions**

15 Parties are generally expected to set forth all their arguments in support of
16 summary judgment in a single dispositive motion that conforms with the page
17 limits set forth in the local rules. No party shall file multiple, successive, or
18 piecemeal motions for summary judgment without first obtaining leave of the
19 Court.

1 **C. Statement of Uncontroverted Facts**

2 The parties shall also file a Joint Statement of Uncontroverted Facts no later
3 than **three days** after filing of the reply with a courtesy copy emailed to
4 dimkeorders@waed.uscourts.gov.

5 **D. Notice of Hearing**

6 *Daubert* and dispositive motions shall be noted for hearing at least **50 days**
7 after the date of filing. The Court, below, reserves a date for a hearing on the
8 parties' anticipated dispositive motions.

9 **9. Certification to the State Supreme Court**

10 No later than the date for filing dispositive motions, the parties must identify
11 any issue of liability or damages which should be certified to the State Supreme
12 Court.

13 **10. Constitutional Challenge**

14 No later than the date for filing dispositive motions, the parties must comply
15 with the procedures contained within Fed. R. Civ. P. 5.1, if the constitutionality of
16 a federal or state statute is called into question.

17 **11. Motion Practice**

18 **A. Notice of Hearing**

19 Parties are to comply with LCivR 7(i) when noting motions for hearing. If
20 oral argument is sought by a party, counsel shall first confer and determine an

1 agreeable hearing date and time, and then contact the Courtroom Deputy at
2 (509) 943-8172 to confirm the Court's availability for the agreed-upon hearing
3 date and time. All non-dispositive motion hearings shall be conducted by video,
4 unless in-person argument is approved by the Court. The parties may use cellular
5 phones for telephonic hearings, but not in speaker mode and provided the caller is
6 in an area with adequate cellular service and minimal background noise. Landline
7 phones may not be used in speaker mode. All phones must be muted unless
8 addressing the Court. Dispositive motion hearings in which oral argument has
9 been requested will be set for in-person appearance, unless otherwise directed by
10 the Court. If the parties seek to request the dispositive motion be heard by video,
11 counsel shall contact the Courtroom Deputy.

12 **B. Motions to Expedite**

13 If there is a need to have a motion heard on an expedited basis, the party
14 must file a motion to expedite and an accompanying memorandum (or declaration)
15 establishing the need for an expedited hearing. The motion shall be noted for
16 hearing, without oral argument, no earlier than seven days after the filing of the
17 motion, or two days after the date of filing with prior permission from the Court.
18 Pursuant to local rule, motions (including stipulated motions) may **not** be noted for
19 hearing for the same day they are filed. *See* LCivR7(i)(2).
20

1 **C. Citing Previously Filed Documents**

2 All references to a previously filed document shall cite to the electronic case
3 filing (ECF) record number and page number within that ECF record, in the
4 following format, “ECF No. ___ at ___.” Such documents shall not be attached as
5 exhibits.

6 **D. Reliance on Deposition Testimony**

7 When a party relies on deposition testimony to support a position it takes in
8 support or opposition to an issue, that party shall provide the Court with the
9 pertinent excerpts of the deposition testimony relied upon and shall cite to page
10 and line numbers of the deposition it believes supports its position. *See generally*
11 *LCivR 56(c)*. Submission of the entire deposition and/or failure to cite to specific
12 portions of the deposition may result in the submission being stricken from the
13 record. *See Orr v. Bank of America*, 285 F.3d 764, 774-75 (9th Cir. 2002).

14 **E. Supplemental Responses or Replies**

15 No supplemental responses or supplemental replies to any motion may be
16 filed unless the Court grants a motion to file such documents.

17 **F. Motions to Reconsider**

18 Motions to reconsider are disfavored. Motions must show manifest error in
19 the prior ruling or reveal new facts or legal authority which could not have been
20 brought to the Court’s attention earlier. The motion shall be noted for expedited

hearing without oral argument seven days after it is filed. No response to a motion for reconsideration need be filed unless requested by the Court. No motion for reconsideration will be granted without such a request by the Court.

G. Decisions on Motions

The parties may call to inquire about the status of a decision on a motion if the Court has not issued an order within **30 days after** the hearing on said motion.

12. Summary of Deadlines

Rule 26(a)(1) exchange	COMPLETED¹
Deadline to add parties, amend pleadings, and file for class certification	November 6, 2023
Rule 26(a)(2) expert reports produced to other parties and emailed to the Court: Initial Experts: Rebuttal Experts:	December 22, 2023 January 19, 2023
Fact discovery requests served	70 Days Before Discovery Cutoff
Motions to compel discovery filed	30 Days Before Discovery Cutoff
Discovery Cutoff	February 16, 2024
Notice of to-be-adjudicated claims and	February 23, 2024

¹ The parties proposed that initial disclosures be exchanged by October 26, 2023. ECF No. 60 at 8. If the parties have not yet completed initial disclosures, the parties shall do so **on or before November 3, 2023**.

1	affirmative defenses filed	
2	All <i>Daubert</i> motions filed	March 1, 2024
3	Dispositive motions	March 1, 2024
4	Plaintiffs:	March 29, 2024
5	Defendants and Intervenor:	April 12, 2024
6	Plaintiffs' Reply:	April 26, 2024
7	Defendants' and Intervenor's Reply:	
8	HEARING ON DISPOSITIVE AND	May 21, 2024, at 10:00 a.m.
9	DAUBERT MOTIONS	in Yakima Courtroom 324
10	PRETRIAL CONFERENCE	<i>To be set following ruling on</i>
11		<i>dispositive motions.</i>
12	FINAL PRETRIAL CONFERENCE	<i>To be set following ruling on</i>
13		<i>dispositive motions.</i>
14	BENCH TRIAL	<i>To be set following ruling on</i>
15		<i>dispositive motions.</i>

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and provide copies to the parties.

DATED October 30, 2023.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES DISTRICT JUDGE